

Serial No. 10/775,255

Attorney Docket No. 26CT-012-CON

**REMARKS**

The applicants appreciate and acknowledge receipt of the initialed copy of the forms PTO 1449 that were filed on 28 October 2005 and 15 November 2005. Please note that a Supplemental Information Disclosure Statement and a Form PTO-1449 were filed on April 6, 2006.

A Petition under 37 CFR 1.48(b) to delete an inventor was filed concurrently with the Response to Restriction Requirement on March 17, 2005, because Masahiro Takimoto is no longer an inventor of the invention being claimed. Applicants respectfully request a decision on the Petition. Accordingly, attached hereto is a copy of:

- OIPE hand delivery filing receipt, stamped by OIPE on March 17, 2005, acknowledging receipt of items including the Petition under 37 CFR 1.48(b); and
- Stamped postcard receipt of March 17, 2005 acknowledging receipt of items including the Petition under 37 CFR 1.48(b).

A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO. Inasmuch as the above items are properly itemized on the postcard receipt and the filing receipt, it is respectfully submitted that the Petition was filed. Acknowledgment thereof is respectfully requested, together with an indication that Masahiro Takimoto is deleted as a named inventor.

Claims 19, 21 – 23, 26 – 32, 34, 35, 38 and 39 are pending. Claims 22, 26 – 31 and 35 have been withdrawn. The applicants respectfully request reconsideration and allowance of this application in view of the above amendments and the following remarks.

Claims 19, 21, 23, 32, 34 and 38 – 39 were rejected under 35 USC 103(a) as being unpatentable over U.S. Patent No. 6,152,480, Iwanaga (“Iwanaga”) in view of U.S. Patent No.

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6,092,836, Saslecov ("Saslecov"). Independent claims 19 and 32 have been amended to recite "the fixing members being arranged only on the left-right direction end side of the general portion." Support for the amendment is located in Fig. 41, for example. The rejection is respectfully traversed for reasons including the following, which are provided by way of example.

Independent claim 19 recites in combination, for example, "fixing members that fix the airbag cover to the panel, each of the fixing members being located outside of the fasteners with respect to the case, the fixing members being located near an outer edge of the general portion, the fixing members being arranged only on the left-right direction end side of the general portion." (See also claim 32.)

The operation of the airbag device is affected by the fixing members which are arranged only near the outer edge of the left-right direction of the general portion. In other words, in the airbag device, the fixing members are arranged on the general portion far from the fasteners in the left-right direction (the longitudinal direction). When the airbag is expanded, the expanding airbag pushes the door rearward, and then the breakaway portion is broken to open the door. More specifically, when the door is pushed by the inflating airbag, initially, an area of the airbag cover near the upper and lower portions of the breakaway portion are deformed by the pushing force of the airbag, so as to expand toward the passenger compartment along the vertical direction (i.e., along the airbag cover's width direction). Then, the door opens upon the breakage of the breakaway portion. In the airbag device, the general portion of the airbag cover is fixed firmly to the panel by the fixing members at the area remote from the door, in the left-right direction.

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Moreover, the fixing members are not affected by the breakage of the breakaway portion, because the fixing members are positioned on the left and right ends of the airbag cover. The left-right direction is perpendicular to an expanding direction of the upper area of the airbag cover near the upper and lower portions of the breakaway portion, i.e., the upper-lower direction.

Therefore, in the airbag device, the vertical width of the general portion, or the vertical width of the airbag cover, is reduced since the fixing members are not arranged in the upper or lower outer edges of the general portion. In a knee protecting airbag device, it is desirable for the vertical width of the airbag cover to be as small as possible, because there is only a limited space for accommodating an airbag cover between the column cover and the passenger. The airbag device as recited can have an upper-lower direction with as small a width as possible, and it can be firmly fixed to the panel.

On the other hand, without conceding that Iwanaga or Saslecov discloses any feature of the present invention, Iwanaga is directed to a structure of a door portion of an air bag. Saslecov discloses an airbag device for knee protection.

To properly reject a claimed invention, the examiner must establish a *prima facie* case of obviousness. To establish a *prima facie* case of obviousness with respect to a claimed invention, all the claim limitations must be taught or suggested by the prior art reference (or references when combined). *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). Moreover, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Furthermore, the teaching or suggestion to make the claimed combination and a reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

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The examiner bears the burden of establishing this *prima facie* case. In re Deuel, 34 U.S.P.Q.2d 1210, 1214 (Fed. Cir. 1995). The applicant for patent may then attack the *prima facie* case as improperly made out, or present objective evidence tending to support a conclusion of nonobviousness. In re Fritch, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992).

Where, as here, the examiner fails to establish a *prima facie* case of obviousness, the applicant has no burden to rebut the rejection of obviousness with evidence. In re Rijckaert, 28 U.S.P.Q.2d 1955, 1957 (Fed. Cir. 1993). If the examination at the initial stage does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of patent. In re Oetiker, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992).

The applicants provide herein a selection of some examples of limitations in the claims which are neither taught nor suggested by Iwanaga. According to Iwanaga, the fixing members (29, 31) are arranged all around the opening of the case (53), as illustrated, e.g., in FIG. 3. In other words, the fixing members (29, 30) are arranged near the upper and lower outer edge of the airbag cover. Therefore, in Iwanaga, the width of the airbag cover (21) in the upper direction is larger. Moreover, Iwanaga's airbag device is for a front passenger's seat. In an airbag device for a front passenger's seat, there is no problem of space limitation in the vertical width (in the situation of an airbag device for a front passenger's seat, this will be the front-rear width). Accordingly, Iwanaga does not contemplate the problem and the recited structure which is specific to airbag devices for knee protection. Moreover, Iwanaga fails to teach or suggest that its airbag cover has a structure with a reduced width in the front-rear direction.

The final Office Action admits that Iwanaga "does not directly disclose the airbag for protecting the knee of occupant, and the panel is a knee-panel, which is located approximately at the knee level of a passenger seated in the passenger compartment." (Final Office Action, page

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3). Recognizing that Iwanaga fails to teach and/or suggest the invention as claimed, Saslecov is cited to remedy the deficiencies.

Nevertheless, Saslecov fails to remedy such deficiencies. For example, Saslecov fails to teach or suggest fixing members as recited.

Hence, Iwanaga and Saslecov, alone or in combination, fail to teach or suggest the combination of features recited in independent claims 19 or 32, when considered as a whole.

Furthermore, because the proposed modification of Iwanaga in combination with Saslecov would change the principle of operation of the both of the references being modified, the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 813, 123 USPQ 349, 352 (CCPA 1959) ("the suggested combination of references would require a substantial reconstruction and redesign of the elements shown in [the primary reference] as well as a change in the basic principle under which the [primary reference] construction was designed to operate"). Because the proposed combination appears to change the principle of operation of Iwanaga and/or Saslecov, as discussed previously in detail, the proposed combination fails to teach or suggest the recited invention.

With respect to the rejected dependent claims, applicants respectfully submit that these claims are allowable not only by virtue of their dependency from independent claims 19 and 32, but also because of additional features they recite in combination.

Applicants respectfully submit that, as described above, the cited prior art does not show or suggest the combination of features recited in the claims. Applicants do not concede that the cited prior art shows any element recited in the claims. However, applicants have provided specific examples of elements in the claims that are clearly not present in the cited prior art.

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Applicants strongly emphasize that one reviewing the prosecution history should not interpret any of the examples applicant has described herein in connection with distinguishing over the prior art as limiting to those specific features in isolation. Rather, for the sake of simplicity, applicants have provided examples of why the claims described above are distinguishable over the cited prior art.

The applicants respectfully request entry of the present amendment for the following reasons. First, the amendments to the claims are necessary to further clarify the claimed invention to the Examiner with respect to claiming the full scope of patent protection which the applicants believe is appropriate and/or to address claim informalities. These amendments address the Examiner's issues with respect to the claimed invention, and most were unable to be introduced earlier since additional rejections were included in the Final Office Action, and in some instances, the Examiner's rejections were not fully understood until further explained in the Final Office Action.

Second, the amendments to the claims do not raise new issues requiring further search since the amendments involve a narrowed scope of protection that should not be burdensome for the Examiner to review.

Third, the applicants respectfully submit that no new matter has been introduced. In addition, the amendments made to the claims are minor changes performed in response to the Examiner's comments.

Fourth, the amendments to the claims place the application in better form for appeal by materially simplifying the issues, i.e., correcting formality requirements and clarifying the asserted patentable distinctions over the prior art.

Accordingly, the applicants respectfully request entry of the present Amendment.

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In view of the foregoing, the applicants submit that this application is in condition for allowance. A timely notice to that effect is respectfully requested. If questions relating to patentability remain, the examiner is invited to contact the undersigned by telephone.

If there are any problems with the payment of fees, please charge any underpayments and credit any overpayments to Deposit Account No. 50-1147.

Respectfully submitted,



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